

Taunton Deane Borough Council

Executive – 24 March 2016

Land at Creedwell Orchard Housing Estate, Milverton

This matter is the responsibility of Councillor John Williams, Leader of the Council

Report Author : Adrian Priest, Principal Estates Surveyor

1 Executive Summary / Purpose of the Report

The purpose of this report is to consider and obtain approval to vary an Option Agreement with S Notaro Limited (SNL) for the purchase of land at Creedwell Orchard Housing Estate, Milverton by extending the “Exercise Period”.

2 Recommendations

- 2.1 The Executive is recommended to approve the extension of the “Exercise Period” currently 120 days from the “Trigger Date” within the Option Agreement by a further period of six months.

3 Risk Assessment (if appropriate)

Risk Matrix

Description	Likelihood	Impact	Overall
If the Exercise Period on the trigger date is not extended an appeal against a recent refusal of a planning application may be made by Notaro resulting in time and costs to the Council in defending the appeal and a delay in obtaining a potential significant capital receipt	5	4	20
<i>The mitigations for this are to extend the Exercise Period in the Option Agreement</i>	2	4	8

Risk Scoring Matrix

Like liho	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
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	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
Impact							

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

4 Background and Full details of the Report

- 4.1 An Option Agreement was entered in to with SNL on 27 February 2014 for a period of 10 years following Executive approval given at its meeting on 13 July 2013.
- 4.2 The terms of the Agreement provided that the option had to be exercised within 120 days (Option Period) of either:-
- the determination of the Town and Village Green Application (T&VGA) made by a Local Community Group in respect of the land owned by SNL (which was withdrawn on 3 July 2014); or
 - the date of the determination of a planning application made by SNL for an alternative development scheme using the Council's land as an access, including statutory periods of time for the determination of any appeals or judicial reviews (Trigger Date). The absolute longstop date for the exercise of the option is 12 years from the date of the Option Agreement.
- 4.3 Before the T&VGA was withdrawn, a planning application for an alternative development scheme was submitted by SNL on 18 March 2014 which has been determined and a Notice of Refusal was issued by the Council as planning authority on 15 October 2015. Statute provides that an applicant has a period of six months in which to submit an appeal against the planning decision.

- 4.4 In accordance with the current terms of the Option Agreement the “Trigger Date” is considered to be 15 October 2015. SNL has 120 days from this date to exercise the option to purchase the Council’s land unless an appeal against the decision of the planning application or a new application is received from SNL by 13 April 2016. In the absence of any appeal against the planning decision it is further considered that the option to purchase the Council’s land would have lapsed on 13 February 2016.
- 4.5 Since the completion of the Option Agreement it has come to light that the formula for the sale price of the Council’s land is based upon inappropriate valuations. This is as a result of incorrect information having been provided by SNL from the outset which was relied upon by both the Council and external valuers.
- 4.6 Further external valuation advice has been sought from the Valuation Office Agency (VOA) and it has been instructed to negotiate a revised option sale price formula with SNL based upon the correct floor areas of the extant scheme, which have been verified by the Council and the VOA. The outcome of this will be reported to the Executive separately in due course with a view to obtaining approval to amend the sale price formula and any other terms of the Option Agreement, as considered appropriate in due course.
- 4.7 In the circumstances, therefore, it is considered appropriate to allow the Exercise Period within the Option Agreement to be extended by a period of six months in the absence of any appeal or new planning application being made by SNL by 13 April 2016. This will allow time for the revised sale price formula to be negotiated and should negate the need for the Council to deal with a planning appeal to effectively extend the Option Trigger Date if the extant scheme is to be ultimately built out by SNL.

5 Links to Corporate Aims / Priorities

- 5.1 The eventual capital receipt obtained from the sale of the land, which is to be reinvested into affordable housing will greatly assist the Council in fulfilling its Corporate Aim of Quality Sustainable Growth and Development.

6 Finance / Resource Implications

- 6.1 Other than costs incurred in varying the Option Agreement and a slight delay in obtaining a capital receipt by extending the Exercise Period there are not considered to be any significant Finance / Resource Implications.

7 Legal Implications

- 7.1 A formal Deed of Variation to the Option Agreement will need to be completed with each party bearing its own costs incurred.

8 Environmental Impact Implications

8.1 None associated with this report.

9 Safeguarding and/or Community Safety Implications

9.1 None associated with this report.

10 Equality and Diversity Implications

10.1 None associated with this report.

11 Social Value Implications

11.1 None associated with this report.

12 Partnership Implications

12.1 None associated with this report.

13 Health and Wellbeing Implications

13.1 None associated with this report.

14 Asset Management Implications

14.1 This report has been generated through Asset Management.

15 Consultation Implications

15.1 None associated with this report.

16 Scrutiny Comments / Recommendation(s)

16.1 None associated with this report.

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Executive – Yes**
- **Full Council – No**

Reporting Frequency : **Once only** **Ad-hoc** **Quarterly**
 Twice-yearly **Annually**

Contact Officers

Name	Adrian Priest	Name	
Direct Dial	01823 356390	Direct Dial	
Email	a.priest@tauntondeane.gov.uk	Email	

Name		Name	
Direct Dial		Direct Dial	
Email		Email	